IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6559 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT SECONDARY AND HIGHER SECDONDARY EDUCATION BOARD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6559 of 2003

MR DIPAK R DAVE for Petitioner No. 1-6

MR SS PATEL, LD. APP for Respondent No. 1

MS JAYSHREE C BHATT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/09/2004

ORAL JUDGEMENT

Heard Mr.Dipak R. Dave, learned counsel appearing for the petitioners and Ms.Jayshree C. Bhatt, learned counsel appearing for the respondent no.2-orig. complainant.

2. Considering the contentions raised before the Court by the petitioners and type of criminal complaint, it is clarified by Mr.Dinesh Patel (Assistant Secretary), responsible officer who is present in the Court in compliance of the order dated 15th September, 2004, that the respondent-student namely Surendra Bhagvanbhai Sewda can approach the petitioner-Board directly and can obtain a blank application form, if he really intends to appear in the next coming examination. The Board at present has decided that the respondent-student can return the application form to the Board directly or through a school namely Nutan Fellowship School, Bapunagar, Ahmedabad, because the school through which the respondent-student had appeared in the H.S.C. examination of the Board is at present closed. It is further clarified that the respondent-student shall get and fill in the form on or before 31st October, 2004, and the petitioner-Board shall deal with the answersheets with utmost fairness and transparency.

3. The nature of resistance placed by the respondent-orig.complainant has no merit. The allegations made in the complaint have no substance. Today the officer who is present in the Court has brought original answersheets of the respondent-student, so that the Court can have a look on them and xerox copies of the answersheets of Std.XI have also been brought to explain the grievance expressed by the respondent-student.

4. Having considered the answersheets brought before this Court of respondent-student of Std.X, XI and XII, the Court is satisfied that there is some substance in the say of petitioner-Board and there is no element of either truth or correctness in the complaint. It seems that with an ulterior motive and just to pressurize the Board and officers of the Board present complaint has been filed.

5. In view of the above, present petition is hereby allowed. The criminal complaint filed by the orig.complainant being Inquiry Case No.110/2002, pending in the Court of learned Metropolitan Magistrate, Court No.18, Ahmedabad, and the summons/show cause notice issued by learned Metropolitan Magistrate dated 31st July, 2002 are hereby quashed.

6. It will be open for the petitioner-Board to prosecute the orig.complainant for instituting a false complaint in either civil or criminal court or both. The Board can even recover damages and costs that have been incurred to the Board on account of this malicious prosecution instituted by the orig.complainant. Today even this Court could have awarded exemplary costs in favour of the petitioner-Board, but in view of the nitty-gritty of the facts emerging from the record and as the Board itself has approached this Court in the capacity of the petitioner, this Court is not inclined to pass any formal order awarding costs in favour of the petitioner-Board. Rule is made absolute accordingly.

(C.K. Buch, J)

Aakar